

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
High-Cost Universal Service Support)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
Lifeline and Link Up)	WC Docket No. 03-109
Universal Service Contribution Methodology)	WC Docket No. 06-122
Numbering Resource Optimization)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
IP-Enabled Services)	WC Docket No. 04-36

**Comments of the
Washington Utilities and Transportation Commission**

The Washington Utilities and Transportation Commission ("UTC") respectfully submits the following comments in response to the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") issued by the Federal Communications Commission ("FCC" or "Commission") in the above captioned proceedings.¹ The UTC continues to have concerns about the potential adverse effect of the FNPRM on Washington's rural business and residential consumers,

¹ *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36, FCC 08-262 (released: November 5, 2008).

particularly those consumers presently served by the so-called "midsize" carriers (CenturyTel and Embarq) and by Qwest Corporation, which is treated as a "nonrural" for a variety of federal regulatory purposes, including for access to high-cost support.

The instant proceeding involves an FNPRM intended to reform the mechanism providing high-cost universal service support, expand such support to promote the widespread availability of broadband internet access services, provide new support to Lifeline/Linkup consumers for broadband services, reform the universal service contribution methodology, and alter dramatically the nation's intercarrier compensation system ("USF/ICC reform"). The general topic of USF/LCC reform is a longstanding one, and while it may be commendable to some that the current Commission is attempting to address USF/ICC reform before a new administration takes office, those state agencies such as the UTC that have the day-to-day responsibility to ensure service quality and fair rates in their respective jurisdictions believe that the new proposals set forth in the FNPRM have not been fully debated, yet would lead to significant adverse consequences for rural customers in Washington state.²

Accordingly, the UTC opposes the FNPRM in its present form and urges the Commission to refrain from moving forward on adopting the proposed regulations according to the abbreviated time frame that media reports indicate may be contemplated by the Commission.

I. Insufficient time has been provided for parties, including affected state commissions, to provide meaningful input and comment on three specific proposals to change dramatically the nation's universal service support mechanisms and intercarrier compensation system.

The Commission seeks comment on three specific proposals that, if implemented in whole or in part, would dramatically alter funding and disbursement of federal universal service monies. Using newly advanced legal theories surrounding telecommunications traffic, the proposals would intrude on state commission authority over intrastate intercarrier compensation rates (intrastate access charges and rates

² The Washington Legislature has given the UTC statutory authority and responsibility to regulate telecommunications companies in the public interest and promote diversity in the supply of telecommunications services throughout the state. In doing so, the UTC is required to ensure that the rates charged to Washington consumers are fair, just, and reasonable.

applied to “non-local” virtual NXX traffic). Together, the three proposals number more than 400 pages and address a wide variety of funding and compensation concerns.³

The UTC agrees that comprehensive long-term universal service reform is necessary given the realities of a telecommunications marketplace that is increasingly characterized by substantial inter-modal and intra-modal competition. The FNPRM recognizes correctly that broadband internet access has become an essential means to communicate, pursue research and education, and enhance economic circumstances for businesses and residential consumers.

Unfortunately, the Commission has provided only two weeks for direct comments and only one additional week for reply comments on all three of the proposals. With so much at stake, there is simply not adequate time for state commissions or others to conduct meaningful analysis of the impact of the proposed changes on those carriers providing basic telecommunications and broadband services to consumers. Over the past few weeks there have been scores of *ex parte* and other filings by industry representatives concerning the pros and cons of various aspects of intercarrier compensation and universal service reform. In many instances, they have submitted entirely new or modified reform proposals to reach a potential “compromise” on a reform package that could “conceivably” move forward.⁴

State commissions, including the UTC, have been effectively shut out of the process and are now given an extremely short timeframe for assessing and commenting on the impact of the revisions

³ Individually, they are Appendix A, the “Chairman’s Draft Proposal” circulated to his colleagues on October 15, 2008; Appendix B: a “Narrow Universal Service Reform Proposal” circulated on October 31, 2008, and Appendix C: a draft “Alternative Proposal” first circulated by the Chairman to his colleagues on November 5, 2008.

⁴ See for example, Appendix D to FCC 08-262 consisting of an October 24, 2008 Notice of Written *Ex Parte* Presentation by Free Press on the “draft ICC-USF reform proposal (“Draft Proposal”) currently scheduled for a full Commission vote on November 4th”, October 29, 2008 *Ex Parte* joint filing of OPASTCO and WTA.

In another *Ex Parte* filing, Google, Inc. asked the Commission to clarify that an “Accessible Number” is a “North American Numbering Plan (NANP) telephone number used for a telephone access service that enables a Final Consumer of Service to make and receive calls and for which the Contributor charges a fee to a Final Consumer of Service.” Such definition could unreasonably exempt Google from making appropriate contributions to Federal Universal Service support. The exception the company seeks is directly contrary to the overall goal of the Commission’s FNPRM to rationalize the patchwork quilt of regulatory distinctions, exemptions, and classifications inherent in the existing universal service contribution regime. As it migrates to a new contribution regimen, the Commission should reject efforts to adopt new exceptions. Letter of Donna N. Lampert, Counsel for Google, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed October 3, 2008).

contemplated in the FNPRM. The reforms contemplated in Appendix' A and C effectively shift or put at risk billions of dollars of universal service funding and intercarrier compensation, which may have dramatic or dire consequences for consumers served by particular telecommunications carriers. While it may be true there is already a detailed record on various aspects of universal service and intercarrier compensation reform, it is equally true that insufficient time has been allowed to all affected or interested parties to scrutinize the specific elements of the changes contemplated in Appendix' A and C. The comment cycle on the FNPRM is simply too short, and denies a meaningful opportunity to comment as required by the federal Administrative Procedure Act.

II. The Commission's proposal to preempt traditional state commission authority over intrastate intercarrier compensation rates.

The Chairman's proposal and the draft Alternative Proposal contain a new legal theory under which the Commission asserts jurisdiction over all telecommunications traffic by deeming such traffic to be covered by the compensation provisions of 251(b)(5). Using its newfound authority to preempt any state efforts to impose traditional telephone company regulations over IP/PSTN information services, the Commission claims that under sections 251 and 252 of the Act, the Commission and the states are to address the same matters through their parallel jurisdiction over both the interstate and intrastate matters. Under the FCC's new legal theory, what was once a "dual-based" jurisdictional approach to regulating telecommunications services (i.e., Commission regulation of interstate and state commission regulation of intrastate services) has now become a regime in which the Commission proscribes the regulations applying to both interstate and intrastate services with states left to implement only those matters the Commission deems appropriate.

Despite the Commission's efforts to effectively "federalize" all aspects of intercarrier compensation, the fact remains that state commissions are closest to consumers and the specific aspects of the provision of telecommunications services in their markets, regardless of the means of transmission (circuit-switched or IP). The comments of the National Association of Regulatory Utilities Commissions

(NARUC) will address the Commission's legal authority to change the existing interstate and intrastate distinction governing the Commission's and state commissions' authority over telecommunications traffic. NARUC will also address the Commission's intention to classify IP/PSTN (i.e., calls that originate on IP networks and terminate on circuit-switched networks, or conversely, calls that originate on circuit-switched networks and terminate on IP networks) as "information services" subject to its exclusive jurisdiction on a going-forward basis. The UTC, which is a NARUC member, incorporates by reference NARUC's comments on the unprecedented legal position taken by the Commission with respect to intrastate and IP/PSTN traffic.

III. The Commission's proposals may slow further broadband investment in rural areas.

In Appendices A and C, the Commission proposes shifting federal high-cost funding to broadband Internet access services as a condition of incumbent LEC's having continued access to federal high-cost universal service support. Under the Commission's proposal, all incumbent LECs would be required at some point in the near future to commit to offer broadband Internet access service to all customers within their service area within five years. Additionally, except for the nation's smaller rural rate-of-return incumbent LECs, each carrier's individual high-cost support is effectively frozen, on a lump sum basis, at the December 2008 annualized level. Incumbents not willing to make the five-year commitment risk losing all of their existing federal high-cost support as a result of a reverse auction.

The Commission's purpose fails to recognize that the individual operating characteristics of each rural market is determined by factors such as terrain, accessibility, distance, and customer density, not by the size or arbitrary classification of the incumbent carrier that serves it. In the case of rural "midsized" companies, the proposal's broadband build-out requirements, which are linked to access to continued universal service funding, could actually work to deter further broadband investment in rural areas by the mid-sized carriers that serve of the most rural areas of Washington State. In fact, large swaths of the state have extreme or difficult terrains that challenge provision of telecommunications and broadband services. Additionally, significant portions of Washington's rural service areas are served by two "midsize" carriers

(CenturyTel and Embarq), which appear to be the carriers most adversely affected by the Commission's proposals. In Washington, CenturyTel and Embarq serve approximately 9 and 10 access lines per square mile, respectively, and together, these companies serve nearly 30 percent of the area of Washington state.

The UTC is very concerned that certain carriers – particularly midsize carriers - will be unable or unwilling to make the commitment to provide broadband Internet access service throughout their service territories (i.e., study areas) given the requirement to provide universal or 100 percent coverage within five years. It is entirely conceivable that under the Commission's reform proposals some incumbent LECs, particularly the so-called midsize carriers, will not be able to commit to provide such access to all customers in their service areas.⁵ Thus, rather than promoting new or increased broadband investment in rural areas, the universal broadband commitment requirement, coupled with the prospect of reverse auctions, could have a reverse or "chilling effect" on the investment plans of Washington's incumbent carriers. Some may simply cease making further investment in rural telecommunications and broadband infrastructure. In essence, the sweeping USF/ICC reform changes contained in the Chairman's Proposal and the draft Alternate Proposal run the risk of implementing a cure for maladies that actually kill the patient.

Another failing of the Commission's reform proposals are their failure to address the findings of the Tenth Circuit regarding universal service funding for nonrural carriers. Pursuant to the Telecommunications Act of 1996, the Commission must adopt rules fulfilling the Act's guarantee that rural consumers have access to telecommunications and information services that are "reasonably comparable" in quality and price to those available in urban areas. This includes provisions that adequately address rural consumers who happen to be served by an incumbent non-rural carrier such as Qwest. As the company noted in a recent *ex parte* filing:

Twice, the Tenth Circuit has found that the Commission's rules fall short of this fundamental mandate. Three years ago, the court directed the Commission in *Qwest II* to "comply with our decision in an expeditious manner, bearing in mind the 27 consequences of delay." Under *Qwest II*, the Commission must: (1) revise its definition of what constitutes "sufficient" high-cost support

⁵ Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, 96-45, WC Docket No. 05-337 (filed October 20, 2008).

to non-rural carriers to consider all the principles in section 254(b), including affordability, (2) revise its definition of "reasonably comparable" to meet the Commission's obligation to preserve and advance universal service, and (3) modify its methodology for distributing federal high-cost support to ensure that it provides "sufficient" support and guarantees "reasonably comparable" rates and services in rural areas served by nonrural carriers.⁶

The UTC agrees with Qwest that the Commission must address the Tenth Circuit's direction in *Qwest II* as part of its effort to reform federal universal service funding, particularly the availability of voice services at reasonably comparable rates and quality.⁷ As Qwest contends, without sufficient support, both affordability and service quality are put at risk in these areas. Thus, the Commission must address specifically its obligations under the Tenth Circuit remand within the context of comprehensive universal service funding reform.

IV. If implemented, the proposed time frame for reducing access rates must be extended.

If the Commission is determined to proceed with a transition to a uniform call-termination rate, it should lengthen significantly the transition period for aligning rates. Rates must be brought down in a coherent and predictable manner that considers the impact on the carriers, rate payers, and state commissions.

The UTC is concerned by the front-loaded nature of the proposal reduction from intrastate to interstate rates over a two-year period, followed by a just-as-swift reduction from interstate rates to the interim state reciprocal compensation rate. Under the Commission's plan, once the interim rate is reached, state commissions are given six years to make the interim rate consistent with Faulhaber pricing principles.

The UTC believes that front-loading the rate reductions in the first four years of a decade-long transition would result in reduced service and curtailed investment in rural Washington. A more sound

⁶ Letter from Melissa E. Newman, Vice President – Federal Regulatory for Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, WC Docket No. 05-337, 07-135, 06-122 (filed October 28, 2008).

⁷ This is not the first time the UTC has addressed the Tenth Circuit's remand. See *ex parte* Letter from David W. Danner, Executive Director – Washington Utilities and Transportation Commission, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 (filed June 9, 2008).

policy approach would be to use the full 10-year period to construct a unification plan that represents a more reasonable "glide path" to a new compensation mechanism. This would allow the industry and state commissions to manage better the changes in the economic relationship between carriers and end users. It would also allow state commissions more time to deal with any unintended consequences of such dramatic reductions in rates.


As a separate matter, the UTC notes that an essential element of any transition plan involving dramatic reductions to interstate and intrastate access charges should be a commensurate commitment by the beneficiaries of such reductions to pass the benefits of the changes on to retail consumers. In the 1980s and 1990s, when the Commission implemented interstate access-charge rate reductions, (primarily as a consequence of phasing out recovery of a portion of non-traffic sensitive costs from interexchange carriers), it required interexchange carriers to flow through the effect of access-charge reductions to their own end users. The ten-year transition plan envisioned in Appendices A and C does not contain a similar commitment or requirement of those carriers most likely to benefit from migrating to a uniform call termination rate, an oversight that may improperly enable the remaining large providers of interstate and intrastate long distance services to effectively "pocket the difference." The Commission should correct this oversight by establishing a mechanism to assure adequate flow-through of the access charge reductions to retail consumers.

Another means of establishing some tangible consumer benefits would be to require the primary beneficiaries of access charge reductions to build out broadband infrastructure to those high cost areas currently not receiving such service within their existing study areas. The plans set forth in Appendices A and C provide no requirement for such build-out by the major carriers and relies instead on "market forces" to provide for the prospect of lower retail rates. This defect in the proposal should be corrected.

V. Conclusion.

While the FNPRM contains a number of promising concepts for reforming the nation's universal service support system and intercarrier compensation, the apparent rush to a result before the forthcoming change of administration has resulted in a hurried and flawed process and outcome for adopting such reforms. For the reasons stated above, the UTC respectfully requests that the Commission refrain from implementing the FNPRM as it is presently structured.

Respectfully submitted this 26th day of November, 2008

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